

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re Flint Water Cases,

No. 5:16-cv-10444-JEL-MKM

Hon. Judith E. Levy

Mag. Mona K. Majzoub

CHAPMAN PLAINTIFFS' RESPONSE TO ORDER OF COURT
DATED APRIL 28, 2020, DKT #1718

- 1) *See* Motion to File Under Seal filed April 28, 2021 at Dkt. # 1719.
- 2) a) See attached emails from Valdemar Washington, Esquire dated March 9 and March 10 , 2021 Exs. A and B.

The March 10 email documents the facts that

- When Defendant VNA filed Daubert challenges to the Class Plaintiffs' experts, the challenges relied in part on the deposition of Dr. Specht
- As a result, on Feb. 4, 2021, Class Counsel asked Mr. Stern to release Dr. Specht's transcript to them, subject to the overall protective order, ECF # 1162-3
- In response to this request, Mr. Stern replied "Yes. Absolutely."
- Shortly thereafter, VNA's counsel emailed copies of Dr. Specht's transcript to seven other plaintiffs' attorneys. These were "produced without redaction

as per my conversation with Corey this afternoon, and should be maintained as Highly Confidential”

Ex. B attached

Under paragraph 12 (b) (iv) of the Confidentiality Order, all counsel of record for parties in the federal Flint Water Cases” are entitled to access material labeled “Highly Confidential.” Moreover, such material may be used by “any party” at trial or any evidentiary hearing. *Id.* at para. 11 (c). Since the undersigned is counsel of record for parties in the Flint Water Cases, he is entitled to access the material and use it under the terms of the order.

Paragraph 10 of the Confidentiality Order further allows Highly Confidential documents to be filed under seal in accordance with Local Rule 5.3. Undersigned counsel followed the protocol required by Local Rule 5.3. Originally the Motion to Seal was filed by hardcopy only, and was received by the court on Monday April 26. See Fed Ex tracking slip attached as Ex. C.

After receipt of this court’s order, the same document was electronically filed on April 28, 2021 as Dkt.# 1719.

b) The only “sharing” of these materials was that counsel were sent pages 46-48 and 138-140 of the deposition, plus the list of exhibits, as required by Local Rule 5.3. See Ex. D attached email from Pam Keys.

These pages contained no information whatsoever about any child, or any child’s medical condition. They only contained information about the total number

of bone scans performed through the date of the deposition, the amount of time it took Dr. Specht to review four bone scans, and his hourly rate, all of which are relevant to the overall fairness of the settlement and attorneys' fees and expenses being sought by Liaison Counsel.

c) No copies were made.

Respectfully submitted,

/s/ Mark R. Cuker

MARK. R. CUKER

Exhibit “A”

From: Valdemar Washington <val@vlwlegal.com>
Sent: Tuesday, March 9, 2021 2:25 PM
To: Mark Cuker <mark@cukerlaw.com>
Cc: Stephen Monroe <smonroe@bernlip.com>; Atty. Gladys L. Christopherson <gladys@vlwlegal.com>
Subject: Re: Flint - Cuker Law bone scans (2021.02.21)

Michael Pitt - however, the transcript itself is marked "Highly Confidential" which means that if you are planning to use it as a part of a filing with the Court there are certain procedures that you have to follow

On Mar 9, 2021, at 2:22 PM, Mark Cuker <mark@cukerlaw.com> wrote:

Who told you that

Sent from my iPhone

On Mar 9, 2021, at 1:50 PM, Valdemar Washington <val@vlwlegal.com> wrote:

Hi Mark,

I have been told that there is no protective order on these deposition transcripts.

Val

<2020.10.16 Specht, Aaron Final Depo Transcript Day 2 (1).pdf>

<2020.10.15 Specht, Aaron Final Depo Transcript Day 1.pdf>

Exhibit “B”

From: Valdemar Washington <val@vlwlegal.com>
Sent: Wednesday, March 10, 2021 2:54 PM
To: Marc Bern <mbern@bernlip.com>; Stephen Monroe <smonroe@bernlip.com>; Mark Cuker <mark@cukerlaw.com>; Joseph J. Cappelli <jcappelli@bernlip.com>
Subject: Fwd: Flint: Dr. Thompson File Materials/Bellwether Plaintiffs

Begin forwarded message:

From: Michael Pitt <mpitt@pittlawpc.com>
Subject: FW: Flint: Dr. Thompson File Materials/Bellwether Plaintiffs
Date: March 10, 2021 at 2:29:58 PM EST
To: Valdemar Washington <val@vlwlegal.com>

Val: This is the email chain explaining how we got access to the Specht Transcript

From: Devine, Alaina N. <ADevine@Campbell-trial-lawyers.com>
Sent: Thursday, February 4, 2021 2:44 PM
To: Theodore Leopold <tleopold@cohenmilstein.com>; CStern@levylaw.com
Cc: Hunter Shkolnik (hunter@napolilaw.com) <hunter@napolilaw.com>; Esther Berezofsky <EBerezofsky@eblawllc.com>; pnovak@weitzlux.com; Emmy Levens <elevens@cohenmilstein.com>; Jessica Weiner <jweiner@cohenmilstein.com>; Michael Pitt <mpitt@pittlawpc.com>; Campbell, James M. <jmcampbell@Campbell-trial-lawyers.com>; Rogers, David M. <drogers@Campbell-trial-lawyers.com>; Penhallegon, John R. <jpenhallegon@campbelltriallawyers.com>; Fletcher, Christopher D.

[<CFletcher@campbell-trial-lawyers.com>](mailto:CFletcher@campbell-trial-lawyers.com)

Subject: RE: Flint: Dr. Thompson File Materials/Bellwether Plaintiffs

Ted,

Per Corey's note, attached are the transcripts for Specht and Krishnan. These are being produced without redaction per my conversation with Corey this afternoon, and should be maintained as Highly Confidential.

Thank you,

Alaina N. Devine

Campbell Conroy & O'Neil

Professional Corporation

<image001.jpg>

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Suite 310

Boston, MA 02129

Tel: (617) 241-3037

Fax: (617) 241-5115

Email: adevine@campbell-trial-lawyers.com

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From: Devine, Alaina N.

Sent: Thursday, February 4, 2021 1:47 PM

To: Theodore Leopold <tleopold@cohenmilstein.com>; CStern@levylaw.com

Cc: Hunter Shkolnik (hunter@napolilaw.com) <hunter@napolilaw.com>; Esther Berezofsky <EBerezofsky@eblawllc.com>; pnovak@weitzlux.com; Emmy Levens <elevens@cohenmilstein.com>; Jessica Weiner

<jweiner@cohenmilstein.com>; mpitt <mpitt@pittlawpc.com>; Campbell, James M. <jmcampbell@Campbell-trial-lawyers.com>; Rogers, David M.

<drogers@Campbell-trial-lawyers.com>; Penhallegon, John R.

<jpenhallegon@campbelltriallawyers.com>; Fletcher, Christopher D.

<CFletcher@campbell-trial-lawyers.com>

Subject: Flint: Dr. Thompson File Materials/Bellwether Plaintiffs

Ted,

Per Corey's note, we will put the materials on a Sharefile site now and have that along to you shortly.

Thank you,

Alaina N. Devine

Campbell Conroy & O'Neil

Professional Corporation

One Constitution Wharf

Suite 310

Boston, MA 02129

Tel: (617) 241-3037

Fax: (617) 241-5115

Email: adevine@campbell-trial-lawyers.com

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From: Theodore Leopold <tleopold@cohenmilstein.com>

Sent: Thursday, February 4, 2021 1:00 PM

To: Stern, Corey <CStern@levylaw.com>

Cc: Hunter Shkolnik (hunter@napolilaw.com) <hunter@napolilaw.com>; Devine, Alaina N. <ADevine@Campbell-trial-lawyers.com>; Esther Berezofsky <EBerezofsky@eblawllc.com>; pnovak@weitzlux.com; Emmy Levens <elevens@cohenmilstein.com>; Jessica Weiner <jweiner@cohenmilstein.com>; mpitt <mpitt@pittlawpc.com>

Subject: RE: Flint

Alaina,

See Corey's response below. Does this cure your objection and thus you will immediately provide the materials?

Ted

Theodore Leopold
Partner

<image004.jpg>

Cohen Milstein Sellers & Toll PLLC

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From: Stern, Corey <CStern@levylaw.com>
Sent: Thursday, February 4, 2021 12:57 PM
To: Theodore Leopold <tleopold@cohenmilstein.com>
Cc: Hunter Shkolnik (hunter@napolilaw.com) <hunter@napolilaw.com>; Devine, Alaina N. <ADevine@campbell-trial-lawyers.com>; Esther Berezofsky <EBerezofsky@eblawllc.com>; pnovak@weitzlux.com; Emmy Levens <elevens@cohenmilstein.com>; Jessica Weiner <jweiner@cohenmilstein.com>; mpitt <mpitt@pittlawpc.com>
Subject: Re: Flint

Yes. Absolutely.

Corey M. Stern

Levy Konigsberg, LLP

800 Third Ave, 11th Floor

New York, New York 10022

(212)605-6298

(212)605-6290 (facsimile)

<https://link.edgепilot.com/s/8632bf13/kv4al7dirUWvrgCodA5Wnw?u=http://www.levylaw.com/>

On Feb 4, 2021, at 12:54 PM, Theodore Leopold <tleopold@cohenmilstein.com> wrote:

Hunter and Corey

As you know VNA filed Daubert challenges to everyone of our experts. One of their supporting declarations in support of one of their Daubert Motions is that of Dr. David Thompson. Dr. Thompson's deposition is set for Feb. 10-11. Within Dr. Thompson's file is Dr. Specht's and Mira Krishnar's deposition transcripts. Per Dr. Thompson's supporting declaration he relies on both depositions in support of opinions. VNA has refused to provide the two deposition transcripts to us on the grounds of Judge Levy's earlier ruling with was based upon your objections. It seems we are in a catch 22. Will you agree to allow VNA to provide the two transcripts to us asap under a protective order? If not, I need to immediately raise the issue with Judge Levy. Please let me know asap.

Ted

Theodore Leopold

Partner

[<image001.jpg>](#)

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<2020.10.05 Krishnan, Mira Final Depo Transcript Volume I.pdf>

<2020.10.06 Krishnan, Mira Final Depo Transcript Volume II.pdf>

<2020.10.15 Specht, Aaron Final Depo Transcript Day 1.pdf>

<2020.10.16 Specht, Aaron Final Depo Transcript Day 2.pdf>

Thank you,

Valdemar L. Washington | Attorney at Law
Valdemar L. Washington, PLLC



 [\(810\) 407-6868](tel:(810)407-6868)
 [\(810\) 691-2002](tel:(810)691-2002)
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 Val@VLWLegal.com
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Exhibit “C”



773539779674



ADD NICKNAME

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Monday, April 26, 2021 at 10:02 am



DELIVERED

Signed for by: J.STRONG



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OBTAIN PROOF OF DELIVERY

FROM

Cuker Law Firm
Mark R. Cuker

One Logan Square
130 N. 18th Street, Suite 1200
Philadelphia, PA US 19103
215-531-8522

TO

Federal Building and US Courthouse
District Court EDM

600 Church Street
Room 140
FLINT, MI US 48502
215-531-8522

Travel History

TIME ZONE

Local Scan Time



Monday, April 26, 2021

10:02 AM

FLINT, MI

Delivered

8:11 AM

FLINT, MI

On FedEx vehicle for delivery

6:35 AM	FLINT, MI	At local FedEx facility
4:51 AM	FLINT, MI	At destination sort facility
Sunday, April 25, 2021		
5:49 PM	MEMPHIS, TN	Departed FedEx location
Saturday, April 24, 2021		
6:09 PM	FORT WASHINGTON, PA	Left FedEx origin facility
3:04 PM	FORT WASHINGTON, PA	Picked up
1:27 PM	JENKINTOWN, PA	Picked up Tendered at FedEx Office
11:27 AM		Shipment information sent to FedEx

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TRACKING NUMBER 773539779674	SERVICE FedEx Standard Overnight	WEIGHT 1 lbs / 0.45 kgs
DELIVERY ATTEMPTS 1	DELIVERED TO Guard/Security Station	TOTAL PIECES 1
TOTAL SHIPMENT WEIGHT 1 lbs / 0.45 kgs	TERMS Shipper	PACKAGING FedEx Envelope
SPECIAL HANDLING SECTION Deliver Weekday, Saturday Pickup	SHIP DATE 4/24/21 ?	STANDARD TRANSIT 4/26/21 by 4:30 pm ?
ACTUAL DELIVERY 4/26/21 at 10:02 am		

Exhibit “D”

From: Pam Keys

Sent: Monday, April 26, 2021 9:18 AM

To: PErickson@plunkettcooney.com; wayne.mason@faegredrinker.com; Devine, Alaina N. <ADevine@campbell-trial-lawyers.com>; Campbell, James M. <jmcampbell@campbell-trial-lawyers.com>; cbarbieri@fosterswift.com; kuhler@michigan.gov; wkim@cityofflint.com; Craig S. Thompson <cthompson@sullivanwardlaw.com>; ssmith@bdlaw.com; Hunter Shkolnik <Hunter@napolilaw.com>; tleopold@cohenmilstein.com; Jayson Blake <jeblake@mcaldpinelawfirm.com>; mpitt@pittlawpc.com; Michael.L.Williams@usdoj.gov; LJensen@hallrender.com; bettenhausenm@michigan.gov; Mark Cuker <mark@cukerlaw.com>; smonroe@bernllp.com; DGreenspan@blankrome.com; CStern@levylaw.com; frank.bednarz@hlli.org

Cc: Mark Cuker <mark@cukerlaw.com>

Subject: Flint Water Litigation

Attached please find an unredacted version of Chapman Plaintiffs' Motion to Review and Respond to Hourly Billing and costs; and for Discovery of Bone Scan Information, and Exhibit C to the Declaration of Mark R. Cuker which has been conditionally filed under seal, as well as Chapman Plaintiffs' Motion to file these documents under seal.

PAMELA KEYS

Paralegal

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